

Message Text

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PAGE 01 USUN N 03501 302150Z

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07

INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06

OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01

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FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 8922

C O N F I D E N T I A L USUN 3501

FROM LOSDEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL MEETING OF PLENARY ON DISPUTE
SETTLEMENT, AUG 27

1. SUMMARY: MEETING OF INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 27 CONSIDERED ARTICLE 14.1 AND 14.2 OF THE RSNT WHICH RELATES TO EXHAUSTION OF LOCAL REMEDIES. ALL SPEAKERS PROPOSED DELETION OR AMENDMENT OF THESE PROVISIONS SAVE THE UNITED STATES, WHICH CONFINED ITS INTERVENTION TO DISCUSSION OF PRECEDENTS AND PRACTICAL EFFECTS OF THIS RULE IN INTERNATIONAL LAW. FRANCE AND URUGUAY OFFERED AMENDMENTS WHICH GAINED SUPPORT. END SUMMARY.

2. MADAGASCAR, INDIA, AND ECUADOR OPPOSED THE DRAFT TEXT ON THE GROUND THAT IT RESTRICTED NATIONAL SOVEREIGNTY.

3. THE USSR, BULGARIA, AND SWITZERLAND CHALLENGED A CONFIDENTIAL

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PAGE 02 USUN N 03501 302150Z

STRUCTION OF THE DRAFT WHICH WOULD EXTEND JURISDICTION OF

COASTAL STATES BEYOND RIGHTS GRANTED TO THEM IN ARTICLE 44 OF THIS CONVENTION.

4. THE US RESERVED ITS POSITION ON INCLUSION OR EXCLUSION OF THESE ARTICLES IN THE CONVENTION. US REP. OUTLINED HISTORY OF ACCEPTANCE OF THE PRINCIPLE OF THE REQUIREMENT THAT LOCAL REMEDIES BE EXHAUSTED PRIOR TO REFERENCE OF A DISPUTE TO AN INTERNATIONAL BODY. THIS PRINCIPLE WAS FIRST ELABORATED BY LATIN AMERICAN STATES. ITS PURPOSE WAS TO PROTECT AGAINST TOO EARLY DIPLOMATIC INTERVENTIONS. THE PRINCIPLE WAS ACCEPTED BY MAJOR POWERS IN MANY AGREEMENTS INCLUDING THE GENERAL ACTS OF 1928 AND 1949. MORE THAN 20 CASES WHICH AROSE IN UNITED STATES COURTS HAVE BEEN SUBSEQUENTLY ADJUDICATED IN INTERNATIONAL TRIBUNALS. US REP. EMPHASIZED THAT EXHAUSTION OF LOCAL REMEDIES IS REQUIRED ONLY IN DISPUTES RELATING TO CLAIMS BY INDIVIDUALS AND CORPORATIONS, AND CANNOT APPLY IN INTERSTATE DISPUTES.

5. SEVERAL DELEGATIONS BASED THE ARGUMENT FOR DELETION OF SECTIONS 14.1 AND 14.2 ON THE GROUND THAT THIS IS ALREADY AN ACCEPTED PRINCIPLE OF INTERNATIONAL LAW, AND THAT IT NEED NOT BE ELABORATED IN THE PRESENT CONVENTION. THE UK AND AUSTRALIA DIRECTLY SUPPORTED THIS. URUGUAY AND CHILE DID SO INDIRECTLY.

6. FRANCE SUPPORTED BY SEVEN OTHER DELEGATIONS OFFERED THE FOLLOWING SUBSTITUTES FOR 14.1 AND 14.2;
QUOTE WITHOUT PREJUDICE TO ARTICLE 18, THE FORUM PROVIDED IN ARTICLE 9 AND 10 OF THIS CHAPTER CANNOT BE SEIZED IN CASE OF A DISPUTE BETWEEN OPPOSING CONTRACTING PARTIES WITH REGARD TO INTERPRETATION OR APPLICATION OF THE PRESENT CONVENTION BEFORE THE EXHAUSTION OF LOCAL REMEDIES, IN ACCORDANCE WITH INTERNATIONAL LAW. UNQUOTE

7. URUGUAY, SUPPORTED BY MANY OF THE SAME STATES, OFFERED ANOTHER ALTERNATIVE TEXT; QUOTE WITHOUT PREJUDICE TO THE PROVISIONS OF ARTICLE 18, NO CONTRACTING PARTY SHALL BE EMPOWERED TO SUBMIT TO THE PROCEDURES PROVIDED IN ARTICLES 9 AND 10 ANY DISPUTE WHICH IN ACCORDANCE WITH TERMS OF THE PRESENT CONVENTION CAN BE SUBMITTED TO

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PAGE 03 USUN N 03501 302150Z

SUCH PROCEDURE IF PREVIOUSLY LOCAL REMEDIES HAVE NOT BEEN EXHAUSTED AS REQUIRED BY INTERNATIONAL LAW. UNQUOTE

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